

HOLTZMAN VOGEL PLLC
Attorneys at Law

98 Alexander Pike
 Suite 33
 Warrenton, VA 20186
 p/540 + 1-808
 f/540 + 1-809

March 15, 2006

VIA FACSIMILE
202-219-3923

Audra Wassom
 Office of the General Counsel
 Federal Election Commission
 999 E Street, NW
 Washington, DC 20463

Re: MUR 5669

Dear Ms. Wassom:

This is a response to the Commission's reason to believe finding of February 17, 2006 finding that Frist 2000, Inc. failed to report a loan on its January 31, 2001 report and miss-reported a loan on its July 31, 2001 report.

Prior to the filing of the complaint that led to MUR 5669, Frist 2000, Inc. took every reasonable step to ensure compliance with the Federal Election Campaign Act. Frist 2000, Inc. routinely consulted with FEC staff on compliance and filing matters and as the facts have shown, certainly did not intend to conceal any loan information from the public or the Commission.

Conversations with Reports Analysis Division

During 2004, representatives of Frist 2000, Inc. consulted with the staff of the Reports Analysis Division of the Federal Election Commission incident to Frist 2000 retaining new compliance counsel and transitioning the filing responsibility to a new staff person. These communications were part of a comprehensive evaluation of all filing matters associated with the committee and in anticipation of preparing a termination report.

RECEIVED
 FEDERAL ELECTION
 COMMISSION
 OFFICE OF GENERAL
 COUNSEL
 2006 MAR 16 P 1:29

26044142737

The Commission's staff reviewed the Frist 2000, Inc. reports in detail more than one year before the complaint that led to this MUR was filed. During the course of the communications between FEC staff and Frist 2000, Inc., the Reports Analysis Division provided advice on how to file the appropriate amendments to the 2000 and 2001 reports. It was these conversations that lead to the 2004 amendments to the reports. The Commission's own analysis indicates that the 2004 amendments to the 2001 reports provided the necessary information.¹

Frist, 2000, Inc. relied on these conversations to justifiably conclude that MUR 5669, filed in July of 2005, was without a factual basis for a reason to believe finding. If the Commission had believed that the amendments filed in 2004 did not correct the reporting and disclosure issues, the Commission would have proceeded with an internally generated MUR at that point, but chose not to do so. In fact, at the time the Commission concluded that all outstanding matters were resolved to the Commission's satisfaction and that a termination report could be filed.

Factual Information About the Loans

Frist 2000, Inc. is attempting to locate back up materials associated with the original loan documents in order to provide the Commission with the best evidence available to support its assertion that Frist 2000, Inc.'s liability was subordinate to that of Bill Frist for Senate (BFS) and that Frist 2000, Inc. only signed the documents at the request of the bank.²

Frist 2000, Inc. has confirmed that this loan was never personally guaranteed by Senator Frist. A subsequent loan in the amount of \$360,000 to Frist 2000, Inc. was personally guaranteed by Senator Frist. However, that loan is not the subject of this MUR.

Instead, the Commission's belief that Senator Frist personally guaranteed the loan arises from an administrative error on a Frist 2000, Inc. entry found on the summary page of its FEC report. Staff for Frist 2000, Inc. mistakenly entered the loan on line 14(a) instead of line 14(b) of the summary page. The actual loan documents, filed with the Commission as a part of BFS' filings, indicate that Senator Frist signed the loan document as an official of BFS and as an official of Frist 2000, Inc. and not in his personal capacity.³

Furthermore, it appears that the Commission currently suggests a reporting method that would have double-reported the \$1.44 million loan. Essentially, the Commission seems to indicate that both BFS and Frist 2000, Inc. should have reported

¹ See Factual and Legal Analysis, Page 4.

² Frist, 2000, Inc. was only required by Commission regulations to preserve records for three years. See 1 C.F.R. §§ 102.9 and 104.14.

³ The loan documents were on file with the Commission during 2004 when representatives of Frist 2000, Inc. were in discussions with the staff of the Reports Analysis Division regarding what amendments need to be filed to properly report the loan.

26044142788

\$1.44 million loan on their year-end 2000 reports, which would have disclosed a total of \$2.88 million in loans taken by separate committees, both associated with Senator Frist.⁴ Legally and logically, such double reporting undermines the policies and purposes of the Federal Election Campaign Act and certainly is inconsistent with the previous discussions between Frist 2000, Inc. and the Commission staff.

As cited above, the reporting method that the Commission suggests in its factual and legal analysis would disclose a \$1.44 million loan on the 2000 year-end report for BFS and a \$1.44 million loan on the 2000 year-end report for Frist 2000, Inc. If Frist 2000, Inc. had chosen such a method, there would have been an over-reporting of single loan. Such a method could have also given rise to a potential violation by Frist 2000, Inc.

It appears that the Commission has presented Frist 2000, Inc. with a "catch 22" situation. As Frist 2000, Inc. noted in its initial response, it viewed its position in the loan as subordinate to that of BFS until Frist 2000, Inc. assumed the debts and liabilities of BFS. From that point forward, Frist 2000, Inc. reported and disclosed the liability, though there may have been less detail than is required by Commission regulations.

Throughout this entire process, Frist 2000, Inc. attempted to correct reporting issues immediately when such issues were brought to its attention by the Commission or by the firm hired in 2004 to assist with reporting.

Statute of Limitations

Finally, Frist 2000, Inc. believes that the issue of the statute of limitations should be raised in this matter. The Commission's reason to believe report identified two violations – one concerning the alleged failure to report the loan on the year-end report due January 31, 2001, and one concerning alleged improper reporting of the loan on the mid-year report due July 31, 2001. In this MUR, the complaint was not filed until July 2005 and the Commission did not make its reason to believe finding until February 17, 2006.

As the courts have made clear, the general 5 year statute of limitations found at 18 U.S.C § 2462 applies to civil violations of the FECA. *Federal Election Commission v. Williams*, 104 F.3d 237, 239 (9th Cir. 1996). The same decision held that the "FECA's campaign finance reporting requirements are, as a matter of law, sufficient to give FEC notice of facts that, if investigated, would indicate the elements of a cause of action." *Id.* (internal quotations omitted).

The Commission did not make its reason to believe finding with respect to the alleged failure to report on the January 31, 2001 report until February 17, 2006. Because the Commission failed to institute a civil action to collect a monetary penalty by January

⁴ BFS was terminated as a political committee on September 14, 2001. As a result, it appears that no further amendments to that committee's reports are possible.

26044142789

31, 2006, the Commission is barred by law from doing so.⁵ If the conciliation process fails to reach an agreement with Frist 2000, Inc. with respect to this violation, the Commission is barred by law from instituting a civil action to collect any assessed monetary penalty because the Commission did not act by January 31, 2006.⁶

The Commission also did not make its reason to believe finding with respect to the alleged improper reporting on the July 31, 2001 report until February 17, 2006. If the conciliation process fails to reach an agreement with Frist 2000, Inc. by July 31, 2006 with respect to this violation, then the Commission would be barred from instituting any civil action to collect any assessed monetary penalty.⁷

Conclusion

Given the age of the matters at issue, and the pre-complaint review of the Frist 2000, Inc. reports by the Commission's Reports Analysis Division, Frist 2000, Inc. believes that the Commission should proceed as follows:

- Dismiss MUR 5669 with respect to the 2000 year-end report because this report is outside the Commission's statute of limitations.
- Revise its findings to conclude that the 2001 mid-year report, as amended, failed to include items Schedules C and C-1 as required, while properly reporting the disbursements to repay the debt.

I appreciate your assistance in this matter. Frist 2000, Inc. looks forward to concluding this MUR as expeditiously as possible so that Frist 2000, Inc. may be terminated as a federal political committee. Thank you again for your attention.

Sincerely,



Jill Holtzman Vogel

⁵ Even if the Commission assumes the latest possible date for initiation of the running of the statute of limitations with respect to this matter, *Federal Election Commission v. Williams* makes clear that the latest possible date on which the Commission received notice triggering the statute of limitations clock would be July 31, 2001.

⁶ The Commission would not, however, be prevented from instituting an action seeking a order barring future violations, but any such action would be moot since Frist 2000, Inc. is a committee with a zero (0) dollar balance and is a committee from an election 6 years ago with no ongoing activity (other than zero balance reports until the request to file a termination report is granted).

⁷ The Commission would not, however, be prevented from instituting an action seeking a order barring future violations, but any such action would be moot since Frist 2000, Inc. is a committee with a zero (0) dollar balance and is a committee from an election 6 years ago with no ongoing activity (other than zero balance reports until the request to file a termination report is granted).

26044142790